Supreme Court, U.S.
FILED

05-222 MAR 7 - 2005

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

No.

CHARLES THOMAS JACKSON,

Petitioner,

v.

JOHN E. POTTER Postmaster General, United States Postal Service;

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Respondents.

ON PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petition for Writ of Certiorari

Charles Thomas Jackson,
Petitioner, Pro se
1107 Mission Road, #109
South San Francisco, CA 94080
Telephone: (650) 875-4119

QUESTIONS PRESENTED FOR REVIEW

1. Does the District Court have jurisdiction under the Administrative Procedure Act, 5 U.S.C. §701 *et seq.*, to review decisions of the U.S. Equal Employment Opportunity Commission in Federal Sector EEO complaints?

2. Does a federal agency's failure to acknowledge amendments to an EEO complaint and refusal to produce records relevant to material issues justify summary judgment in favor of an EEO complainant?

3. Does evidence of involuntary servitude raise a question of fact sufficient to rebut an agency's otherwise nondiscriminatory explanation for its treatment of an African American male?

PARTIES

The party to this petition is Charles Thomas Jackson. The parties in the courts below were Charles Thomas Jackson; John E. Potter, Postmaster General, United States Postal Service; and the U.S. Equal Employment Opportunity Commission.

TABLE OF CONTENT

QUESTIONS PRESENTED FOR REVIEW	i
PARTIES	ii
TABLE OF AUTHORITIES	iii
PRIOR OPINIONS	v
JURISDICTION	vi
STATUTES INVOLVED	vi
STATEMENT OF THE CASE	1
PROCEDURAL HISTORY	1
FACTS	9
ARGUMENT	17

1. Does the District Court have jurisdiction under the Administrative Procedure Act, 5 U.S.C. §701 *et seq.*, to review decisions of the U.S. Equal Employment Opportunity Commission in Federal Sector EEO complaints?

2. Does a federal agency's failure to acknowledge amendments to an EEO complaint and refusal to produce records relevant to material issues justify summary judgment in favor of an EEO complainant?

3. Does evidence of involuntary servitude raise a question of fact sufficient to rebut an agency's otherwise nondiscriminatory explanation for its treatment of an African American male?

CONCLUSION 24

TABLE OF AUTHORITIES

CASES PAGE

Chandler v. Roudebush, 425 U.S. 840 (1976) 19

Chuang v. Univ. of Cal. Davis. Bd. Of Trs., 225 F. 3d 1115 (9th Cir. 2000) 8

Cole v. Keller Industries, Inc., 13F.3d 1044 (4th Cir. 1998) 20

Glover v. BIC Corp., 6 F.3d 1318 (9th Cir. 1993) 20

Meaney v. Department of Treasury, EEOC No. 05940169 (November 3, 1994) 26

Nimmo v. United States Postal Service, EEOC No. 01A42244 (June 16, 2004) 26

Pressy v. Patterson, 898 F.2d 1018 (5th Cir. 1990) 20

Rhodes v. U.S. Postal Service, EEOC No. 01994888 (December 18, 2001) 21

Santiago v. United States Postal Service, EEOC No. 01A44396 (November 4, 2004) 26

Snead v. Metro Prop & Cas. Ins. Co., 37 F.3d 1080 (9th Cir. 2001) 8

Testa v. Wal-Mart Stores, Inc., 144 F.3d 173 (1st Cir. 1998) 20

U. A. W. v. Wisconsin Employment Relations Board, 336 U.S. 245 (1949) 23

U. S. v. Kozminski, 487 U.S. 931 (1988) 22

Van Dorp v. United States Postal Service; EEOC No. 01A43307 (September 10, 2004) 26

Ward v. EEOC, 719 F.2d 311 (9th Cir. 1983) 8, 18

Welsh v. United States, 844 F.2d 1239 (6th Cir. 1988) 20

STATUTES	PAGE
5 U.S.C. §704	17, 18

REGULATIONS	PAGE
29 C.F.R. §1514.106(d)	3
29 C.F.R. §1514.106(e)	4
29 C.F.R. Sction 1614.108 (a) and (b)	20
29 C.F.R. Sction 1614.108 (c)(3)	21
29 C.F.R. Sction 1614.109 (f)(3)	21
29 C.F.R. §1614.409	5
Rule 1.7 of the ABA Model Rules of Professional Conduct	11, 22

PRIOR OPINIONS

The opinion of the Court of Appeals is unpublished (App. p. B-1). The Order Granting USPS's Motion for Summary Judgment is unpublished (App. p. D-1). The Order Granting EEOC's Motion to Dismiss is unpublished (App. p. E-1). The decision of the EEOC Office of Federal

Operations is published online at http://www.eeoc.gov/decisions/01980503.txt (App. F-1).

JURISDICTION

Petitioner seeks this Court's review of the judgment entered on December 10, 2004, by the United States Circuit Court of Appeals for the Ninth Circuit, by a Petition for Writ of Certiorari pursuant to the jurisdiction conferred by 28 U.S.C. Section 1254(1). This Petition is timely filed because it was mailed within ninety days of March 9, 2005, the date a motion for rehearing was denied in the court below. Rules 13.3 and 29.2. Jurisdictional basis for the Ninth Circuit is 28 U.S.C. 1291, and for the District Court is 28 U.S.C. 1331.

STATUTES INVOLVED

5 U.S.C. §704 in pertinent part provides:

> Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review under the Administrative Procedure Act.

REGULATIONS INVOLVED

29 C.F.R. §1514.106(d) in pertinent part provides:

> A complainant may amend a complaint at any time prior to the conclusion of the investigation to include issues or claims like or related to those raised in the complaint. After requesting a hearing, a complainant may file a motion with the administrative judge to amend a complaint to include issues or claims like or related to those raised in the complaint.

29 C.F.R. §1514.106(e) in pertinent part provides:

> The agency shall acknowledge receipt of a complaint or an amendment to a complaint in writing and inform the complainant of the date on which the complaint or amendment was filed.

29 C.F.R. §1614.108 (a) and (b) in pertinent part provide:

> (a) The investigation of complaints shall be conducted by the agency against which the complaint has been filed. (b) In the course of its investigation, the agency shall develop an impartial and appropriate factual record upon which to make findings on the claims raised by the written complaint. An appropriate factual record is one that allows a reasonable fact finder to draw conclusions as to whether discrimination occurred.

29 C.F.R. §1614.108 (c)(3) in pertinent part provides:

(3) When the complainant, or the agency against which a complaint is filed, or its employees fail without good cause shown to respond fully and in timely fashion to requests for documents, records, comparative data, statistics, affidavits, or the attendance of witness(es), the investigator may note in the investigative record that the decisionmaker should, or the Commission on appeal may, in appropriate circumstances: (i) Draw an adverse inference that the requested information, or the testimony of the requested witness, would have reflected unfavorably on the party refusing to provide the requested information; (ii) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party; [or] . . .(iv) Issue a decision fully or partially in favor of the opposing party.

29 C.F.R. §1614.109(f)(3) in pertinent part provides:

(3) When the complainant, or the agency against which a complaint is filed, or its employees fail without good cause shown to respond fully and in timely fashion to requests for the investigative file, for documents, records, comparative data, statistics, affidavits, or the attendance of witness(es), the administrative judge shall, in appropriate circumstances: (i)Draw an adverse inference that the requested information, or the testimony of the requested witness, would have reflected unfavorably on the party refusing to provide the requested information;

> (ii) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party; [or] . . . (iv) Issue a decision fully or partially in favor of the opposing party.

Rule 1.7 of the ABA Model Rules of Professional Conduct:

> Prohibits representations that "may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interest," unless: (1) the lawyer reasonably believes the representation will not be adversely affected, and (2) the client consents after consultation."

STATEMENT OF THE CASE
PROCEDURAL HISTORY

This case began with Petitioner's filing e Request for EEO Counseling, on May 18, 1994, with the Postal Service office of EEO Compliance and Appeals. Petition-er complained of a pattern of disparately punitive per-sonnel actions, apparently intended to discredit his intel-ligence, depress his salary, and deny him sufficient con-tinuing legal education (CLE) to maintain his profession-al credentials. He attributed this to his race (African-American), color (black), age (born 1947) and physical handicaps (including severe skin discoloration from atop-ic dermatitis). Petitioner requested a salary adjustment to correct the pay disparity, and uniform compliance with newly adopted salary and training rules.

Following an inconclusive final interview letter from the agency's EEO investigator, Petitioner filed a Formal Complaint on November 16, 1994. Petitioner's Formal Complaint describes and documents a pattern of discriminatory behavior, apparently being practiced by his supervisors since 1987, in the course of which Peti-tioner was being

denied sufficient CLE to maintain his professional credentials, and his salary was being deter-mined on the basis of unsubstantiated and exaggerated accusations, impugning his intelligence and the value of his work. The agency EEO investigator interpreted the issues for investigation as, "You have been under-evalu-ated, paid at a lower rate, and not provided with an op-portunity for choice details."

Between September 5 and November 29, 1995, Pe-titioner amended the complaint to include additional ex-amples of disparately adversarial supervision, including insults to his intelligence, expressions of contempt for the value of his work, refusal to approve an obviously meri-torious training request, and announcement of an ar'ti-cially narrow definition of advocacy that excluded only him. Omission of his computer work from the office newsletter *Password* was mentioned as an example of his supervisors' practice of ignoring his creditable work. Pe-titioner advised the investigator that his workplace had become too hostile for him to function effectively as an advocate, and, by copy, requested that the General Counsel either place him on administrative leave or re-assign him until the